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EDITORIAL – *Editor: Gerry Bates*

Re-thinking Environmental Regulation 403

ARTICLES

“A New Sustainable Financial System Can Secure a Net Zero Future for the World” (Mark Carney, 2021): An Analysis of the Key Climate-related Policies in the Financial Services Sector and the Extent to Which Government Regulation Influences the Sector’s Ability to Be a Driver of Change – *Victoria Calderbank*

It has been claimed that “a new sustainable financial system can secure a net zero future for the world” This article investigates what such a financial system would look like, how it would work and its effectiveness in driving a reduction in greenhouse gas emissions and global warming. A key element of this is the Task Force for Climate-related Financial Disclosures (TCFD) which sets a benchmark of best practice internationally. The TCFD forms the backbone of sustainable finance policies in the United Kingdom and Australia, which are used as case studies to understand how the legal arenas in which financial intermediaries operate influences the sector’s ability to embed the TCFD recommendations and act as a driver for a more sustainable society. 406

Executive Officer Liability for Environmental Offences in the Wake of R v Dumble – *Rebecca Hoare, Juliette King, Jessica Howe and Zara Nadeem*

In all Australian jurisdictions, directors and other officers of a corporation may be criminally liable where their corporation commits an environmental offence, however, there has historically been limited judicial consideration of the executive officer liability provisions in environmental legislation. The Queensland Court of Appeal has now considered the temporal connection necessary to give rise to executive officer liability for environmental harm under the *Environmental Protection Act 1994* (Qld) in a seminal decision that is likely to have implications for the interpretation of environmental legislation throughout Australia. 422

The Coastal Management Framework in New South Wales: A Battle between Science, Law and Politics – *Alisha Kinkade*

Despite the irrefutable reality that our coastlines are changing, there is a substantial roadblock in the uptake of climate and coastal science in the policy and legal spheres. An analysis of first principles in this article shows that it is not “the government” or “politicians” who are solely to blame for the poor uptake, but rather every member of society is personally responsible and accountable for correcting misperceptions of science to account for all its imperfection and uncertainty. There is no doubt that there is widespread fatigue and apathy towards the “inconvenient truths” of climate change. This

article explores through analysis of the Coastal Management Framework in New South Wales, the importance of a reformation of our understanding of science. Breaking down any pre-conceived misperceptions through redefining “science” is critical in removing any roadblocks in the way of climate and coastal science uptake. 432

Agriculture Biodiversity Stewardship Package – An Analysis of Methodology for Environmental Regulatory Efficacy – *Dr Rhett Martin*

The Agriculture Biodiversity Stewardship Package (ABSP) is a Federal government initiative that has the potential to significantly increase biodiversity and provide ecologically sustainable development to the agriculture sector. How well this occurs partly depends on the regulatory framework setting it up which is under review with the enabling Bill currently before Federal Parliament. Key problem areas examined in this article are: operation of the biodiversity certification scheme, methodologies for measuring biodiversity growth and operation of the biodiversity credits trading platform. Getting these areas right in a regulatory framework presents many challenges, not least of which is to account for different farm types and landscapes and presenting a clear dichotomy between regulatory prescription and allowance for discretionary decision-making. This article examines the issue from the perspective of how to address these challenges by examining construction of regulatory frameworks, how this dichotomy between regulatory prescription and discretionary decision-making is managed and what is required in order to achieve regulatory eco-efficacy when implementing the ABSP program. 451

Sea Level Rise and Pacific Small Island Developing States: Implications and Pathways – *Srimayi Tenali*

Sea level rise poses severe consequences for the economic stability, habitability, and existence of Pacific Small Island Developing States (SIDS). Recent legal developments have offered conflicting interpretations of the 1982 UN Law of the Sea Convention, but under the existing framework, Pacific SIDS are at the precipice of losing substantial territorial sovereignty and maritime entitlements. These losses have unprecedented and cascading impacts across sovereignty, governance capacity, and migration. To mitigate immediate impacts of sea level rise, strategies of physical adaptation, planned relocation, and a new rule of customary law are recommended for Pacific SIDS. Revisiting regimes crafted during periods of ecological stability will also be critical to effectively integrate climate change law with international systems. Broadly, there is an urgent need to address the growing impact of sea level rise on legal obligations under international law. 468

Nothing Lasts Forever: Managing Future Risk from Climate Change Impacts on the Australian Coast – *Jacqueline Turner and Nicola Pain*

Planning disputes about coastal protection and planning for adaptation to sea-level rise have reached courts and tribunals in various Australian jurisdictions since the early 2000s. Recent cases reflect a changing approach to coastal development in light of climate change risk within existing statutory frameworks. In merits review courts and tribunals are refusing development consents and imposing consent conditions that reflect the need to adapt over time to future climate change risk. Climate-adaptive outcomes have also been achieved by courts upholding strategic planning instruments aimed at limiting new development in areas likely to become more hazardous over time. 482

Recharge and Recovery of Water through Managed Aquifer Recharge Projects in Western Australia: The Case for Legislative Reform – Clare Ward-Noonan

Securing Western Australia’s sustainable water future will require increased water conservation and the optimisation of water supply sources. One method of securing the State’s valuable water resources is the implementation of managed aquifer recharge projects, defined in the Department of Water and Environmental Regulation’s 2021 policy as “the intentional recharge of an aquifer under controlled conditions for subsequent recovery, demonstrable environmental benefit, or mitigation of the impacts of abstraction”. This article examines the legislative framework the Department of Water and Environmental Regulation relies on to regulate the recharge and recovery of water through managed aquifer recharge projects in Western Australia and demonstrates some of the gaps and deficiencies in that framework. It argues that legislative reform is required to facilitate managed aquifer recharge projects for beneficial water resource and environmental management outcomes and identifies some options for reform. 492

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